

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

Wells Fargo Bank, N.A. as Trustee of WaMu
Mortgage Pass-Through Certificates, Series
2005-PR4

PLAINTIFF

VS.

Emmett Keith Mock; Edith F. Mock; and
Whispering Wind in the Trees Trust, as M.S.
Winter, as Trustee (real owner)

DEFENDANTS

COURT OF COMMON PLEAS
CIVIL DIVISION
MONROE COUNTY

NO: 1:09-CV-878

MEMORANDUM OF LAW

Pennsylvania Rule of Civil Procedure 430(a) specifically provides:

(a) If service cannot be made under the applicable rule the Plaintiff may move the Court for a special Order directing the method of service. The Motion shall be accompanied by an Affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the Defendant and the reasons why service cannot be made.

Note

A Sheriff's Return of "Not Found" or the fact that a Defendant has moved without leaving a new forwarding address is insufficient evidence of concealment. Gonzales vs. Polis, 238 Pa. Super. 362, 357 A.2d 580 (2076). Notice of intended adoption mailed to last known address requires a "good faith effort" to discover the correct address. Adoption of Walker, 468 Pa. 165, 360 A.2d 603 (2076). An illustration of a good faith effort to locate the Defendant includes (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265, (2) inquiries of relatives, neighbors, friends and employers of the Defendant and (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records.

As reflected on the attached Sheriff's Return of Service, the Monroe County

Sheriff's attempts to serve Defendants, Emmett Keith Mock, Edith F. Mock and Whispering Wind in the Trees Trust, as M.S. Winter, as Trustee (real owner), with the Complaint have been unsuccessful.

Good faith efforts to discover the whereabouts of Defendants, Emmett Keith Mock, Edith F. Mock and Whispering Wind in the Trees Trust, as M.S. Winter, as Trustee (real owner), have been made, as evidenced by the numerous inquiries set forth in the attached Affidavit of Good Faith Investigation. *See* Ex. "B." The Affidavit of Good Faith Investigation reflects that 4621 Warrior Trail SW, Lilburn, GA 30047 is a valid address. *See* Ex. "B." However, the Sheriff's Return of Service for that address states otherwise. As reflected in the Affidavit of Good Faith Investigation, inquiries have been made to the following persons and entities:

1. Defendant's creditors;
2. Directory Assistance;
3. Defendant's neighbors;
4. United States Postal Service;
5. Pennsylvania Department of Transportation, Driver and Vehicle Services;
and
6. Pennsylvania State Vital Records Office. *See* Ex. "B."

Inquiries have also been made to public record databases on the Internet, the County voter registration records, and the County tax assessment records. *See Id.* Despite all of the foregoing inquiries, Plaintiff has not been able to determine Defendants, Emmett Keith Mock, Edith F. Mock and Whispering Wind in the Trees Trust, as M.S. Winter, as Trustee (real owner)' present location. Based on the foregoing,


it is more likely than not that Defendants, Emmett Keith Mock, Edith F. Mock and Whispering Wind in the Trees Trust, as M.S. Winter, as Trustee (real owner) is avoiding and/or evading personal service of the Complaint.

Plaintiff respectfully requests this Honorable Court enter an Order allowing Plaintiff to serve the Complaint and any other document or pleading requiring original process on Defendants, Emmett Keith Mock, Edith F. Mock and Whispering Wind in the Trees Trust, as M.S. Winter, as Trustee (real owner), by (1) sending true and correct copies thereof by simultaneous certified and regular mail to the last known address located at 4621 Warrior Trail SW, Lilburn, GA 30047 and 9028 Idlewild Drive, Tobyhanna, PA 18466; and (2) posting a true and correct copy thereof on the mortgaged property located at 9028 Idlewild Drive, Tobyhanna, PA 18466 by the Sheriff or any competent adult.

SHAPIRO & DeNARDO, LLC

Date: 6-8-09

BY:


Ilana Zion, Esquire
Attorney for Plaintiff